

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

CHARLES BAXTER

PLAINTIFF

vs.

Civil Action No. 1:94cv84-D-O

MIKE HUTCHINSON, Individually  
and in his Official Capacity  
as Sheriff of Choctaw County,  
Mississippi, HARLAN HATCHER,  
Individually and in his Official  
Capacity as Police Chief of  
Ackerman, Mississippi, and MIKE  
KING

DEFENDANTS

MEMORANDUM OPINION

Presently before the court are the separate motions of the defendants for the entry of a judgment as a matter of law on their behalf. Finding that there are genuine issues of material fact and that the defendants are not entitled to a judgment as a matter of law, the motions will be denied.

FACTUAL SUMMARY

The plaintiff Charles Baxter instituted this action for damages under 42 U.S.C. § 1983 against the defendants for excessive force and abuse arising from his arrest by the defendants on or about March 22, 1993. After a criminal trial in a Mississippi state court, the plaintiff was found guilty on several charges, including simple assault on a police officer, resisting arrest, public drunkenness and disturbing the peace. Defendant Mike Hutchinson and the remaining municipal defendants have filed

separate motions for summary judgment in this matter.

#### DISCUSSION

##### I. STANDARD FOR THE ENTRY OF JUDGMENT AS A MATTER OF LAW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." F.R.C.P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). After a proper motion for summary judgment is made, the non-movant must set forth specific facts showing that there is a genuine issue for trial. Hanks v. Transcontinental Gas Pipe Line Corp., 953 F.2d 996, 997 (5th Cir. 1992). If the non-movant sets forth specific facts in support of allegations essential to his claim, a genuine issue is presented. Celotex, 477 U.S. at 327, 106 S.Ct. at 2554. "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. and Loan Ins. v. Krajl, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the non-

moving party. King v. Chide, 974 F.2d 653, 656 (5th Cir. 1992).

## II. THE HECK v. HUMPHREY DECISION

The defendants base the weight of their motions on the United States Supreme Court decision of Heck v. Humphrey, 521 U.S. \_\_\_, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994). In Heck, the Supreme Court ruled that:

[I]n order to recover damages for allegedly unconstitutional conviction or imprisonment or for other harms caused by actions whose unlawfulness would render a conviction invalid, a Section 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful, will not demonstrate the invalidity of any outstanding judgment against the plaintiff, the action should be allowed to proceed . . .

Heck, 114 S.Ct. at 2372, 129 L.Ed.2d at 394. The defendants also correctly note that the Fifth Circuit has applied the Heck decision with the following inquiry: Would a judgment in favor of the plaintiff in the § 1983 action necessarily imply the invalidity of his conviction or sentence? Boyd v. Biggers, 31 F.3d 279, 283 (5th Cir. 1994). If so, the plaintiff must show that his conviction or sentence has been "reversed, expunged, invalidated, or impugned by

the grant of a writ of habeas corpus" in order to maintain his action. Boyd, 31 F.3d at 283. This court must follow the same inquiry.

The defendants note to the court that the plaintiff's convictions for simple assault on a police officer are presently on appeal, and have not been "reversed, expunged, invalidated or impugned" as required by Heck. The plaintiff does not dispute this fact. Therefore, the only question before this court on this issue is whether a judgment in favor of the plaintiff in this action would necessarily imply the invalidity of his convictions.

The defendants take the position that a judgment for the plaintiff would necessarily imply the invalidity of his convictions, but their reliance on Heck is misplaced when the facts of the case at bar are considered. The plaintiff's claims are based on the alleged application of excessive force by the defendants. The defendants have not directed this court to, nor is the court aware of, any authority for the proposition that a defendant's otherwise proper conviction can be invalidated based upon the use of excessive force<sup>1</sup> by the arresting officers.

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<sup>1</sup> The defendants point to, as factually similar to the case at bar, a footnote in Heck that explains a particular type of precluded § 1983 claim:

A state defendant is convicted of and is sentenced for the crime of resisting arrest, defined as intentionally preventing a peace officer from effecting a *lawful* arrest . . . He then brings a § 1983 action against the arresting officer, seeking damages for violation of his Fourth Amendment right to be free from unreasonable

The Fifth Circuit has not directly addressed the relationship of Heck to claims of excessive force under § 1983. See Wells v. Bonner, 45 F.3d 90 (5th Cir. 1995) (Fifth Circuit "assumed without deciding" that a finding of excessive force would not imply the invalidity of a conviction within meaning of Heck). However, it is sufficient to note that under other circumstances, the Fifth Circuit has already determined that claims of excessive force do not affect the underlying validity of a state court conviction. E.g., Hernandez v. Spenser, 780 F.2d 504, 505 (5th Cir. 1986); Delaney v. Giarrusso, 633 F.2d 1126, 1128 (5th Cir. 1981).

As well, several sister courts around the country have addressed this issue, and have determined that § 1983 claims of excessive force do not fall within the purview of Heck's preclusive ruling. E.g., Snyder v. City of Alexandria, 870 F.Supp. 672, 687 (E.D. Va. 1994) ("Snyder's allegations that the police used excessive force . . . are unrelated to the validity of his

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searches and seizures. In order to prevail in his § 1983 action, he would have to negate an element of the offense of which he has been convicted . . . [The] § 1983 action will not lie.

Heck, 114 S.Ct. at 2372 n.6, 129 L.Ed.2d at 394 n.6. This court agrees that this passage would control **if** the plaintiff's claim in this case were based upon an unreasonable search and seizure or other constitutional violation **which would make his arrest illegal**. In this case, however, the plaintiff has asserted a claim of excessive force. "A technically lawful arrest can be accomplished by the use of excessive force," thereby creating civil liability even though the arrest and conviction may remain valid. Courtney v. Reeves, 635 F.2d 326, (5th Cir. 1981). As well, it is important to note that not all other constitutional violations make an arrest illegal. Heck, 114 S.Ct. at 2372 n.7, 129 L.Ed.2d at 394 n.7.

conviction. Police liability for such conduct bears no relationship to his guilt or innocence."); Scott v. San Francisco Police Dept., 1995 WL 55301, \*3 (N.D. Cal. Feb. 2, 1995); Jackson v. Ludvick, 1995 WL 42256, \*1 (S.D.N.Y. Feb. 2, 1995) ("The claim for excessive force can be persued independently of the criminal conviction . . ."). This court is not aware of any Federal court which has ruled otherwise. Particularly on point is the Scott case, which also involved a conviction for striking a police officer:

Scott is necessarily attacking neither his battery conviction [of striking a police officer] nor the legality of his confinement. A required element of the malicious prosecution action in Heck was the termination of the prior criminal proceeding in favor of the accused. [cite omitted] Unlike the malicious prosecution claim in Heck, however, it is conceivable here that Scott battered Officer Venters and that excessive force was used against Scott in violation of his civil rights; one scenario does not necessarily preclude the other. Scott need not prove that he did not batter Officer Venters in order to establish an excessive force claim arising from the same incident.

Scott, 1995 WL 55301, \*3. The same is true in this case. Mr. Baxter need not prove that he did not assault a police officer<sup>2</sup>,

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<sup>2</sup> Defendants assert that a factor to be considered in determining the validity of the plaintiff's excessive force claim is "whether the suspect poses an immediate threat to the safety of the officers or others" and that the plaintiff's convictions for resisting arrest and assaulting a police officer are conclusive proof on this point. However, the defendants defeat their own claim for summary judgment when they point out that the ultimate determination on the plaintiff's claim of excessive force is whether the officer's actions were "objectively reasonable." Graham v. Connor, 490 U.S. 386, 396 (1989). Regardless of whether this factor is established by the plaintiff's convictions, that

disturb the peace, or resist arrest in order to recover for a claim of excessive force. He will not have to establish that the police illegally obtained evidence against him, or that they committed any other constitutional violation that would serve as a basis for reversing his conviction. Heck is inapplicable here and a grant of summary judgment on this ground would be improper.

### III. COLLATERAL ESTOPPEL

The alternative argument of the defendants is one based on the preclusive effect of collateral estoppel. The essence of the argument is that based upon the findings of the jury in the criminal trial of the plaintiff, Mr. Baxter is precluded from relitigating the following issues:

- 1) whether Officer King was acting within the scope and duty of his office as a law enforcement officer; and
- 2) whether the plaintiff "unlawfully, feloniously, purposefully and knowingly struck Officer King in the head with his fist;"

Regardless of whether the plaintiff is prevented from litigating these issues in the case at bar, this court has already noted that such preclusion would not necessarily prevent recovery for a claim of excessive force under § 1983. This argument fares no better than the one put forward under Heck. In any event, the court does not agree with the defendant's liberal interpretation of the "scope and duty" of King's "office as a law enforcement officer." The

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factor alone is not dispositive of the excessive force claim.

court is of the opinion that this finding will be relevant to the issue of whether King was acting "under color of law" for the purposes of § 1983. Also, while the plaintiff's actions in striking Officer King might be relevant as to the "objective reasonableness" of the defendants actions, it does not necessarily preclude recovery by the plaintiff. The defendants are not entitled to a judgment as a matter of law on this issue.

#### CONCLUSION

Finding that there are genuine issues of material fact and that the defendants are not entitled to a judgment as a matter of law, the motions for summary judgment shall be denied.

A separate order in accordance with this opinion shall issue this day.

THIS \_\_\_\_\_ day of March, 1995.

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United States District Judge



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Ackerman, Mississippi, and MIKE  
KING

DEFENDANTS

ORDER DENYING SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby  
ORDERED THAT:

1) the motion of the defendant MIKE HUTCHINSON for the entry  
of a judgment as a matter of law in his favor is hereby DENIED.

2) the motion of the defendants HARLAN HATCHER and MIKE KING  
for the entry of a judgment as a matter of law is hereby DENIED.

SO ORDERED, this the \_\_\_\_\_ day of March, 1995.

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United States District Judge